

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
DOCUMENT
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DOC#:
DATE FILED: 03/02/2021

RANDY SWINSON,

Plaintiff,

v.

CITY OF NEW YORK, et al.,

Defendants.

20-cv-994 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On October 28, 2020, in response to an order pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d Cir. 1997), Defendant City of New York provided the names and service information for two Jane Doe officers whom plaintiff intended to sue, namely, the Security Deputy Warden and the Supervisor of Social Services at the Manhattan Detention Complex between January and February 2020. *See* Dkt. 23. The next day, the Court ordered Mr. Swinson to file a second amended complaint naming the newly identified defendants within 30 days of receiving the information. Dkt. 24. Mr. Swinson did not do so. Then, on January 14, 2021, the Court extended the deadline for Mr. Swinson to file a second amended complaint to February 15, 2021. *See* Dkt. 25. Mr. Swinson has still not done so. In light of Mr. Swinson's *pro se* status and the fact that he is currently incarcerated, the Court will give Mr. Swinson one final opportunity to file a second amended complaint naming as defendants the individuals identified by the City. **Failure to file a second amended complaint by April 2, 2021 will result in dismissal of this action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).**¹

Attached to this order are: (1) a form for filing an amended complaint; and (2) the City's letter of October 28, 2020. Mr. Swinson is reminded that any second amended complaint will replace, not supplement, the original and amended complaints. In the event that Mr. Swinson

¹ *See Bekka v. Nash*, No. 19-CV-6041 (LJL) (SDA), 2020 WL 2225379 (S.D.N.Y. Apr. 13, 2020), *report and recommendation adopted*, 2020 WL 2216268 (S.D.N.Y. May 7, 2020) (dismissing lawsuit for failure to prosecute where *pro se* plaintiff failed to file amended complaint after Defendant City responded to *Valentin* order); *Cayetano v. City of New York*, No. 13-CV-1861 (LAK) (JLC), 2013 WL 6097567 (S.D.N.Y. Nov. 20, 2013), *report and recommendation adopted*, 2015 WL 5514324 (S.D.N.Y. Sept. 17, 2015) (same).

files a second amended complaint, the Court will screen it and, if necessary, either request that the newly identified defendants waive service or direct service on them. The Clerk of Court is respectfully directed to mail a copy of this Order to Mr. Swinson.

SO ORDERED.

Dated: March 2, 2021
New York, New York

A handwritten signature in black ink, appearing to read 'Ronnie Abrams', is written over a horizontal line.

Ronnie Abrams
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

____ CV _____
(Include case number if one has been assigned)

SECOND AMENDED
COMPLAINT
(Prisoner)

Do you want a jury trial?
☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

_____		_____
Dated		Plaintiff's Signature

First Name	Middle Initial	Last Name

Prison Address		

County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____



JAMES E. JOHNSON
Corporation Counsel

ALESSANDRA DECARLO
Assistant Corporation Counsel
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adecarlo@law.nyc.gov

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET, Rm. 3-218
NEW YORK, NY 10007

October 28, 2020

BY ECF

Honorable Ronnie Abrams
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Randy Swinson v. City of New York, et al.
20-CV-994 (RA)

Your Honor:

I am an Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel for the City of New York, and the counsel of record for Defendant City of New York in the above-referenced matter. Defendant City respectfully writes to provide information pursuant to the Court's May 18, 2020 *Valentin* Order.

As Your Honor may recall, pursuant to the Court's May 18, 2020 Order, the Court ordered Defendant City to, within sixty days, ascertain and provide to the Court and plaintiff the identities and service address of the two Jane Doe officers plaintiff intended to sue. (See Docket No. 8). On July 14, 2020, in an effort to assist the City with attempting to identify those individuals, this Office requested that the Court issue an order directing plaintiff to provide clarification as to the specific dates on which the aforementioned individuals held their respective positions. (See Docket No. 14). On July 15, 2020, the Court granted defendant's request and thereafter, in a letter dated September 10, 2020, plaintiff provided clarification as to the individuals involved in the alleged misconduct. Pursuant to the Court's October 15, 2020 Order, Defendant City was given until October 29, 2020 to identify the subject individuals. (See Docket No. 22).

Since that time, this Office has undertaken an investigation into the underlying facts and has been able to obtain identifying and service information for the following additional members

of the Department of Correction (“DOC”) who were, upon information and belief, employed as the Security Deputy Warden and Supervisor of Social Services at the Manhattan Detention Complex (“MDC”) between January and February 2020. This information is as follows:

Captain John Hernandez #1806
Manhattan Detention Complex
125 White Street
New York, NY 10013

Ms. Keziah Eaddy, Community Coordinator
Manhattan Detention Complex
125 White Street
New York, NY 10013

We thank the Court for its consideration herein.

Respectfully submitted,



Alessandra DeCarlo
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **BY FIRST CLASS MAIL**
Randy Swinson, #3491903405
Pro Se Plaintiff
Manhattan Detention Complex
125 White Street
9 North, Cell #9
New York, New York 10013